writers have maintained, there is in this age of science, invention and machinery scarcely any other limit to the power of man to produce wealth than the simple inability of the consumer to obtain it, while no one can deny that vastly more is wanted, nay, needed, than is produced. The spectacle of thousands out of, and seeking, employment is the sufficient answer to the pretension that the world is unwilling to make the effort to supply its wants. The impression widely prevails that through some defect in the social machinery the production of wealth is unduly limited, that the product, such as it is, is misdirected, and that most of the evils of society result from this. What is needed is that a cool, dispassionate, and at the same time scientific analysis of the whole problem be made and its real status be set forth. The problem itself seems to be none other than that of the distribution of wealth.

LESTER F. WARD.

Bankruptcy: A Study in Comparative Legislation. By S. WHITNEY DUNSCOMB, Jr., Ph. D. Pp. ix, 167. Columbia College Studies in History, Economics and Public Law. Vol. II. No. 2. New York, 1893.

This careful comparison of the written laws of Europe and the United States on the subject of bankruptcy is intended chiefly for students and legislators, though the practicing lawyer may consult it to advantage when the European law is in question. The general reflections and observations of the author are accurate and valuable.

There is, on the whole, a great resemblance in the laws of all the countries, arising from the necessities of the subject, without in many instances any borrowing by one code from another, excepting that some of the Latin countries follow the lead of France, somewhat as several of our States look to the initiative of New York in matters of legislation.

One of the most striking differences between all Continental countries on the one hand and England and the United States on the other, is that in the former bankruptcy is treated much more strictly as a fault, and even a crime; which has ceased to be the law in England, and never obtained in the United States. This severity is, we suppose, partly the cause and partly the effect of the social aspects of bankruptcy, which is considered a disgrace in the first-mentioned countries.

In several countries "simple bankruptcy" is punishable as a crime, and this is described by our author (pp. 19, 20) to be where the debtor has been "guilty of serious faults in the conduct of his business, not amounting, however, to actual fraud."

Dr. Dunscomb is not quite accurate in saying (p. 24) that the English law for the punishment of fradulent debtors (Stat. 32 and 33 Vict., c. 62) embraces the cases corresponding to simple and fraudulent bankruptcy. This law, as its title implies, punishes fraud only, that is, acts done with intent to defraud, of which the jury is to judge, though in some cases it shifts the burden of proof, and requires the debtor to clear himself of the intent if the facts are proved.

The refinement of manners has brought about, as Dr. Dunscomb observes, a constant relaxation of penalties in Europe. This is especially true of England, where, until 1820, a bankrupt who failed to "surrender," that is, to acknowledge the jurisdiction, and submit to be examined, or who did not give up to the commissioners or assignees his books and papers, or who concealed property of the value of £20, was to be punished as a capital felon, without benefit of clergy (Stat. 5 Geo. II, c. 30, 31, modified by Stat. 1 Geo. IV, c. 115). It is hardly necessary to say that Congress, in the first bankrupt law (April 4, 1800, 2 Stats. 19), in copying this section of the English law, mitigated the penalty to imprisonment for from one to ten years. It may, no doubt, be maintained with some plausibility that the laws of our country are now too lenient.

In regard to poor debtors, however, we may properly claim credit for the fact that Congress passed, as early as 1796, and has ever since maintained, statutes which release such debtors, when honest, by a simple process, now universal in this country, wherever any imprisonment for debt still obtains.

While, as we have said, the laws of the several countries, have a strong general resemblance, there are some particulars of the Continental codes, which may be worthy of consideration by our law makers.

In Belgium, Italy and Spain, the courts may grant a suspension of payments to a trader, who can prove that he is probably solvent, and a majority of whose creditors consent. This is sometimes done with us, out of court, but requires the consent of all the creditors. The expediency of such a law may be doubted (pp. 12, 13, 14).

In regard to preferences, the great stumbling block, in so many cases to the just and equal operation of the law, and which has given rise, in this country, to a great deal of litigation, the knot is cut, in many countries, by dating the bankruptcy back to the proved date of the suspension of payments; but there is danger, in such cases, of avoiding honest transactions. In view of this, many codes provide in much detail, what acts done within a certain period before the declared bankruptcy may be set aside. "Speaking very generally," says our author, "we may say that the acts which may be annulled in the

interest of the estate are those done in bad faith, though for a valuable consideration, those done for no valuable consideration, although in a a few cases the presumption of bad faith raised against gratuitous acts is allowed to be rebutted, and finally those of an equivocal character that are presumed to have been done to favor certain creditors to the prejudice of others, such as the payment of a debt before it is due or in an unusual manner, or the granting of a security for a debt previously contracted."

This does not differ, in principle, from the law which obtains with us (wherever we have bankrupt laws), excepting that the presumptions, above mentioned, are, we suppose, conclusive and do not admit of rebuttal. (See on this general head, pp. 40 to 51.)

In many countries it has been found useful to provide some mode for the oversight and regulation of the proceedings by or on behalf of the creditors, in order to hasten the winding up and to advise the syndic (assignee or trustee) in the settlement of the estate. In England, for instance, there may be a committee of creditors, but if none is chosen, the Board of Trade is required to perform the same duties. Similar provision for a committee is found in the laws of Norway, Denmark, Hungary, Austria, Italy, etc. (pp. 57 to 59.)

The abstract of the laws of the United States is necessarily somewhat condensed, because there is at present no general statute binding throughout the country. An abstract is given of our last bankrupt law, and a summary of the features common to the laws of those States which have a bankrupt law. The want of power in the States to make a satisfactory law is well explained. Upon one of the most important of these liabilities, created by unfortunate decisions (against the protest of Chancellor Kent in "Holmes *vs.* Remsen," 2 John. Ct. 460), that namely which denies to a decree of bankruptcy under a State law the effect of an assignment by the party himself, he remarks (p. 154):

"These difficulties would not arise if the Continental solution of the questions were accepted. According to the Continental theory, the sequestration by the court of the debtor's domicile, is regarded as a judgment transferring all his property to the syndic. This judgment is not *per se* capable of immediate execution outside the territory in which the debtor resides, but according to the general rules of international private law as recognized in Europe, it being shown that such a judgment was rendered in the debtor's domicile, the court of the foreign country appealed to will authorize the judgment to be enforced in its own territory."

JOHN LOWELL.

Boston.